

# NEW MEXICO Lawyer

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OLDIES BUT



GOODIES

For this issue, the *New Mexico Lawyer* dips into the *Bar Bulletin* and *Bar Journal* archives to revive “oldies but goodies,” stories that cover risk management, lawyer-client relations, practice tips, professionalism, and quality of life—ideas still relevant to today’s practice.



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# EVERY GUNSLINGER'S PROBLEM

By Jeff Tolman



*Heat of the Moment*, by Darryl Willison,  
Weems Gallery, Albuquerque

“...we find the Defendant not guilty,” the jury foreman read, and my client hugged me with glee.

“You are GREAT,” he whispered to me with admiration. “Just great!”

After the judge excused the jury and told my opposing counsel and I what a good job we’d done, my client and I went to a restaurant for some nachos and reflection.

Initially, both the nachos and reflection were good but, not totally unexpectedly, as the minutes passed, my client began to change. Sitting across from me no longer was the defendant I had entered the courtroom with, praying his lawyer could wring some reasonable doubt out of his preponderant guilt. In his seat sat an outraged, wrongfully charged citizen, a victim of malicious prosecution and probably false arrest.

Soon the police and prosecutor were not alone in this incompetence. I had joined them.

“You know, Jeff, I would’ve been harder on the officer. Really cut his heart out. You don’t know him, do you? You’re not his attorney or anything? You seemed to let up on him right when you had him on the ropes. I’m not complaining, but I pay you to be ruthless. At least I thought so. But when you eased up on the officer, I wondered whose corner you were in... .”

And on he droned, having forgotten his miserable driving and the several beers he’d had before he was stopped; blanking out of his mind my successful motion to suppress the breath test that gave us any chance at the trial; feeling now that he, not society or the court system or the lawyer who clearly wasn’t going to get paid, was the victim of the system.

“Go ahead and send a bill, but I’ve got to say that I’m going to think about it for awhile. Your opening statement didn’t seem very long or well prepared to me. And did you think about having me testify? The jury may not have been out as long if I had testified. I’d have told them all about that officer and the way he treated me... .”

Getting home late from getting the verdict and listening to my client question every decision I’d made since birth, I found Laurie and the boys in bed. I checked the kids, then nestled under the covers and fell asleep.

“And after you’re dead, Tolman, this town will be mine. Now get ready to draw!”

It seemed like just minutes ago I had been just another cowpoke on the streets of Cheyenne looking for a woman yearning for a paunchy, bald cowboy with bad eyes and a high stakes poker game to watch. (Cowpokes don’t make enough money to play.) But that was before the locals had told me about Bad Bart and his gang, before I’d agreed to defend their town against those scofflaw hombres that threatened to rob their wives and marry their sheep, before I’d taken their last four dollars to come to Greybull and fight for them.

Now here I was, standing twenty paces apart from the biggest, meanest gunslinger I had ever seen.

“On the count of three, draw! ONE!”

Get him, Mr. Tolman,” a small boy murmured.

“We’re behind you,” another gasped.

“TWO!”

“Please give him strength,” a local woman prayed.

“Better him than me,” a frightened man near me said.

“THREE!” And in an instant we both moved. He drew his six guns and began firing. I instinctively dove to my right and fired. My first shot thudded into Bart’s left shoulder. One of his pistols dropped. My next shot sent him to the big saloon in the sky.

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# 50 Ways to Get Referrals

By Kathy Tatone



If you were to ask lawyers how they generate referrals, the answers would range from the obvious to the unusual.

I have obtained clients from the following sources: the man who moved my office furniture, the salesperson at a clothing store, secretaries I interviewed but did not hire, prospective clients whose cases I rejected, my doctor, opposing attorneys, and people who have heard my speeches. Remember, every person you meet is a potential referral source.

## Keep It Simple: Be a Good Lawyer

1. Provide good legal service. Make sure you return client calls promptly, copy clients on all correspondence, and give them monthly (at least) updates on the case. After all, they don't know how to judge the quality of your legal work, but they can judge the quality of the service you provide.
2. Design a business card that instructs clients on what steps to follow in minor legal situations; e.g., if they are in an auto accident or pulled over for drunken driving.
3. Call a client on weekends or evenings when working on his case to show him that his case is so important you are working on it after normal working hours.
4. Be prepared when you go to court and when you meet with clients.
5. Be on time for client meetings. Don't keep a client waiting in the reception area. Have a neat and orderly office.
6. Return client calls within 24 hours (within two hours is best) or have a regular time to return calls and tell clients when it is.
7. Don't promise to do something or meet a deadline unless you are positive you can do it. Always deliver on your promises or explain to the client why you cannot.
8. Always discuss fees at the initial meeting and include your fees in your retainer agreement.
9. Give each client an up-front and honest appraisal of the case when you can realistically formulate an opinion.
10. When the case is over, thank the client in writing for the business and ask him or her to give your card to friends, family, and acquaintances who may need an attorney in the future.

## Don't Be Shy or Modest

11. When you get that great result, rush to get publicity for it.
12. Ask current clients if there are any other legal matters on which they or their relatives may need assistance.

13. Tell people you are a lawyer.
14. Publicize your accomplishments (e.g., awards received or articles published) in your local neighborhood or weekly newspaper.
15. Ask people to keep you in mind for referrals. Often attorneys don't want to appear needy and never ask people to refer cases. If you don't ask, they won't remember you when someone needs a lawyer in your practice area.
16. Give an open house.
17. Always carry a business card and hand it out lavishly.
18. For any article you write, obtain reprints from the publisher or have them professionally reproduced and send them to clients and potential clients; leave some in the reception area; hand them out at speaking engagements; use them to solicit speaking engagements; and include your byline articles with press releases to local newspapers and other publications.

## Remember Your Manners

19. When clients or attorneys refer cases to you, say thank you over lunch—your treat.
20. Be cordial and conversational with your clients' secretaries or assistants.
21. Send thank-you letters, enclosing your business card, to witnesses who testify for you.
22. Be civil to opposing attorneys; they may refer cases.
23. Send a cordial rejection letter with a card to every person whose case you don't take and ask them to call in the future when they need legal assistance.
24. Send thank-you letters to judges and courtroom personnel when your trial is over.
25. Send thank-you letters to any lawyers or clients who refer cases to you. If appropriate, consider sending a box of candy, a plant, or small desk item as a thank-you gift.
26. Be friendly to others in your building and ask them about their work. Offer to talk to friends or acquaintances who may have legal problems.
27. Send congratulatory letters to a client who receives an award, starts a new business or has a baby. Send condolence letters when appropriate.
28. Treat job applicants with respect and send letters to every person who contacts you or sends a resume. Include a business card and state that you would be happy to talk to them or their families and friends with legal problems.

## Stay in Touch

29. Add every new person you meet to a mailing list.
30. Keep in touch with law school classmates. You already know them, and most of them will be practicing in other areas of law and can refer cases to you.
31. Send a yearly mailing to past and present clients, experts, neighbors, relatives, parents of your children's classmates, professionals whom you hire (realtor, accountant, relatives of staff). Sample mailings include holiday cards, announcement of a new address, or firm newsletters.
32. Women and minority attorneys may target other women and minority professionals who would like to work with attorneys who understand their special skills and problems.
33. Keep in contact with former staff and ask for their referrals.

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# Show Me the Money

## Ethical Aspects of Discussing and Collecting Attorneys' Fees

By Philip B. Davis

Whatever else we may want to believe, lawyering is a business. We offer our services to clients who pay us for the work we do. Whether we like it or not, money and talking about money are critical aspects of our daily business.

As is so often the case, timing is everything. It is best that you talk with your client about money matters before the end of your initial interview, but it should not be the first order of business. In addition, you need to learn from your client what is being asked of you before you can intelligently discuss what it may cost for you to handle it.

### Hourly Rates

Hourly rates for attorneys are based on the lawyer's experience and the nature of the work, as well as on the locale in which the work is being done and what the market will bear.<sup>1</sup> One way to determine an appropriate hourly rate is to talk with other lawyers doing that kind of work. Court opinions setting rates in various kinds of cases can be a valuable tool in helping a lawyer establish an appropriate rate. The client's ability to pay also weighs heavily in determining the rate to be charged. As attorneys, we have an obligation to make our services available to persons who cannot afford them, whether that means working for free or for a reduced rate.

### Contingency Fees

The availability of contingency fees for claimants seeking fair compensation for their injuries serves to make legal services available to persons who could not otherwise afford them. Some lawyers will make a hybrid arrangement with a client, charging less than the lawyer's normal hourly rate in return for the opportunity to recover a reduced contingency fee or a statutory fee award, offset by fees paid at the point of a monetary recovery.

The usual contingency fee is one-third of the client's total recovery. In some cases, the percentage may be lower, particularly if the case is settled simply and quickly without need for litigation. If a case goes through appeal, the percentage can approach 50 percent. Our ethical responsibility is to not charge a fee that is unreasonable.<sup>2</sup> The fee agreement goes a long way to tell us what that is, but ultimately we

must do what is fair and what is right, with the best interests of the client always foremost in our thinking and in our actions.

### Fee vs. Costs

The distinction between attorney's fees and costs (or expenses) must be made for the client. This distinction should be spelled out in the fee agreement as well. The discussion should establish responsibility for costs, both as the litigation progresses (the client, if he can afford them, or the lawyer, if she is willing to advance them) and at the end of the case, when ultimately the client must be responsible. As a practical matter, however, in order to be willing to go forward with the case, the impecunious client may need to hear reassurance every contingency-fee lawyer has given to some if not all of her clients. While the client is ultimately responsible for costs, the lawyer will not come after the client at the end of the case if there is no recovery and the client has not paid costs up to that point.

Finally, the client must be told of the risk that if he does not prevail, he may be held responsible for the other side's costs and, in extremely rare circumstances, fees as well. This information is required to enable the client to make an informed decision as to whether to go forward with the case.

### Fee Agreement

A written fee agreement, signed by both the lawyer and the client, is good practice, no matter what type of fee the lawyer charges and the client agrees to pay. Indeed, unless the lawyer has "regularly represented the client," it is preferred by the Rules of Professional Conduct that such an agreement be in writing. As to contingency fee agreements, a written agreement is required.<sup>3</sup> The fee agreement must set out the scope of the work and the lawyer's hourly rate, flat fee or percentage-contingency fee to be charged. The agreement should be straightforward, simple, clear and specific. For hourly-rate billing, the agreement should state when and how often the client will be billed. In contingency fee cases, it is critical that the agreement state whether the contingency will be calculated on the gross, on total recovery to the client, or on the amount available to the client after deduction for nonreimbursed costs. It must also recite whether gross receipts tax and litigation costs will be charged as part of the lawyer's fee or in addition to it.<sup>4</sup> Finally, the agreement should set out the rights and responsibility of the lawyer and the client in the event that representation is terminated.





### Predicting the Future

How extensive the fee discussion needs to be depends on the nature of the fee arrangement and on the client's level of understanding. An hourly-rate or flat-fee agreement will require less explanation than a contingency-fee agreement. An agreement in a civil rights or other statutory fee award case, which may include a hybrid arrangement allowing the attorney either a contingency fee or the fees allowed by statute, will require substantial discussion with the use of simple examples of how the fee calculation may occur. In this regard, you should be cautious about the numbers you use in the examples you give to the client. Use dollar figures, simple to comprehend and much lower than what you believe may be the client's possible recovery. This will avoid the client's unreasonable expectations. Otherwise, your good faith discussion of fees will inevitably come back to haunt you later when you discuss with your client opposing counsel's settlement offer. The discussion should include multiple hypotheticals, set out in plain terms, involving the possible avenues settlement negotiations may take and the possible problems which may arise, including the following examples:

- a. Who decides whether to settle, when, and why;
- b. Lump-sum settlement offers;
- c. Rule 68 offers of judgment;
- d. Offers which include separate amounts for client and counsel;
- e. The unreasonable client;
- f. The unreasonable lawyer;
- g. Firing the client;
- h. Firing the lawyer;
- i. Who pays costs and who is ultimately responsible for them;

In such discussions with the client, the question, "Do you understand?" should be repeatedly raised, preferably in open-ended statements such as, "Tell me what you understand about what we've been talking about," or "So, if that kind of offer is made to us, what do you understand will be your options at that point and what do we do then?"

### Free Choice

The retainer agreement, **unsigned**, should be sent home with the client or sent to the client within a few days of the initial client

conference. The client then has the opportunity to review the agreement at his leisure and outside the pressure and often intimidating atmosphere of the law office. The client is encouraged to call with questions or even to review it with another lawyer. After its execution, a copy of the fee agreement goes to the client for his file.

### When Things Go Sour

Every lawyer has made mistakes, including mistakes that have been to the client's disadvantage. How the lawyer handles such situations will often determine whether things go sour or not. Frequent and honest communication between lawyer and client will almost always help smooth over problems in the attorney-client relationship.

Disputes over billings must be handled the same way. The client wants to be heard and the lawyer must be willing to listen. Almost always, an honest explanation will soothe

feelings and resolve problems. But when the client doesn't pay his bill, the lawyer must decide what to do about it. Suing a client for fees should be absolutely the last resort. Any lawyer who sues her client for fees had better expect to have to defend the inevitable counter-claim for legal malpractice, allegations of unconscionable fees, negligent or intentional misrepresentation, and perhaps even fraud, not to mention the bar complaint that surely will be filed as well.

The lawyer might consider offering to settle for a discounted amount or be willing to submit to mediation or arbitration, available through the State Bar. Many lawyers will simply walk away from a fee dispute rather than to become embroiled in time consuming, unpleasant and frequently nasty or embarrassing litigation. Think about it. Talk with other lawyers about it. As a general rule, lawyers are trained to litigate, not to be litigants.

A professional business-like relationship with the client includes the discussion of and agreement about the lawyer's fees. Clients expect it. Our job requires it. Abraham Lincoln said that a lawyer's time is his stock in trade. Lawyers are entitled to fair compensation for the work that they do. How they go about establishing their entitlement to fees and collecting them says a lot about who they are as professionals and, given the realities of present-day practice, as business persons. Talking to clients about money can be difficult; but it must be done, and it has its rewards.

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### Endnotes

<sup>1</sup> See Rules of Professional Conduct, NMRA 16-105(A).

<sup>2</sup> *Ibid.*

<sup>3</sup> See, Rule 16-105(B) and (C) NMRA; *see also, id.*, Comments to Model Rules ("A written statement concerning the fee reduced the possibility of misunderstanding.")

<sup>4</sup> *Id.*, Rule 16-105(C) NMRA.

*Note: Citations have been updated.*

### About the Author

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# Developing a Marketing Culture in Your Firm

By Bruce F. Malott



Marketing your law firm doesn't mean you have to plaster your face across an I-40 billboard or proclaim to the world you'll avenge the wrongs of drunk drivers or even air TV ads. It doesn't mean you have to run multi-page red-ink ads that scream at people from the Yellow Pages.

Yet some law practitioners see these tactics being used and think that's the way marketing is done. Most are appalled by them. Many have been in practice a long time, have a fairly solid stable of clients, and prefer to merely pray that business just "walks in the door" until they can retire or sell their practice. So they put off confronting the issue of marketing.

Well, my friends, I can tell you from experience that to grow your client base, you have to use strategies that hit somewhere between these two extremes. But first, you need to have a clear plan of action and the tools and techniques to develop a marketing "culture" in your firm. This goes far beyond creating a glossy new capabilities brochure. It starts with an attitude of competent, caring service from your staff, continues on to your existing clients, and extends to the planned cultivation of new business.

The concept of teaching marketing to attorneys has only become successful within the last few years. Like the law, marketing is a practice and a discipline. To be a successful marketer, you will have to exhibit behaviors apart from your own psychology and personal character.

I recently heard of an organization whose board of directors decided to allocate \$10,000 to "do some marketing." Without a clear idea of 1) what they were trying to accomplish, or 2) whom they were trying to reach with their marketing effort, they might as well throw their money into the wind. That's just about how much bang they'll get for their buck without a clear sense of direction. Yet firm after professional firm does exactly this type of thing because they don't have the expertise, commitment, or time to create that "marketing culture."

To mount a successful effort for your firm, you should begin by working through the stages of readiness for marketing.

**Stage I.** The following basic questions will help you determine whether your law firm needs and is ready to initiate a marketing effort:

Do *all* of the partners or shareholders of your firm support a "marketing effort"? Lawyers aren't generally schooled in marketing and often have no clear perception of what is involved. Some may be skeptical or reluctant to become involved. Even in a small firm, it is vital that 100 percent of the decision-makers buy into a marketing program. A good marketing effort requires strong leadership, team playing, and a commitment of time and dollars. If the commitment to marketing is weak, the best of plans are doomed.

Does your firm's compensation system reward marketing efforts and results? Or just production, origination, or seniority?

Do your lawyers have time available for marketing activities? Many professionals think they do, but when it comes down to logging charge hours v. practice development hours, the latter often loses out. Lawyers rarely do marketing activities well because too often they lack the necessary motivation, interest, creativity, and time. They seldom see marketing as a priority in their career paths. Consider hiring a marketing consultant to coordinate your firm's resources and planning activities.

Are your partners or shareholders willing to make changes in the way in which the firm has been managed or marketed in the past?

Can you handle more work if you obtain it? Who wouldn't say, "Of course I can!?" But remember that if you're stretched too thin to handle the clients you have now, it isn't going to get any easier when you add new work.

If you answer "no" to any of the questions, you must first deal with these fundamental issues before launching a marketing program.

**Stage II.** Let's assume that your firm has met all the requirements of Stage I. What's next? Some firms, caught up in the frenzy of "doing marketing," rush to get out a brochure, write a newsletter, or hold a fancy reception. They neglect to focus and differentiate their efforts from the competition. You need to spend some time putting together a marketing plan or program to make sure that your marketing activities reach the targeted individuals or businesses. Potential clients really can't judge the quality of work, level of professionalism, or quality of your lawyers. In choosing a law firm, they must look at your image or the characteristics that make you stand out from the pack. So some research into your firm's strengths, weaknesses, and image is required. Ask your clients, referral sources, the business community, and the legal community questions about how you are perceived and what you do best. This will help you determine your firm's competitive position. Make sure your marketing plan includes actions to maintain or improve it.

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# Ten Kinds of Bad News:

## Clients Who Want Free Advice by Phone and Others to Avoid

By Jay G. Foonberg



You may want to avoid these 10 types of clients:

1. *Clients who bad-mouth their previous attorney(s).* It's just a matter of time until you will be included.
2. *Clients who want to tape-record your meeting.* Often these people are only trying to get a free lesson in the law. They'll ask myriad questions about how and when you do everything on their case. You will rarely see these people a second time, and even rarer will they pay.
3. *Clients who take extensive notes.* Same problems as cited above.
4. *Clients who want to use your office staff as their own.* They want you to type letters for them on their stationery, make photocopies for them, etc. They want to use your phone for incoming and outgoing calls. They are rarely willing to pay for these services.

5. *Clients who want to use your trust account as a banking service.* These clients may want to use the respectability of your office to launder money.
6. *Clients whose first concern is their parking validation.* Clients who are preoccupied with free parking are almost always problem clients.
7. *Clients who ask for a loan of money against the case.* When a client threatens to go to another lawyer unless you lend him or her some money, let the client go. These "clients" often describe a fantastic contingency case that never existed.
8. *Clients who say, "It's the principle, not the money. You can have all the money."* This type of client simply wants to use you for personal revenge. After the case is started, he or she often loses interest and becomes uncooperative. Don't touch these cases unless you are well paid in advance.
9. *Clients who are religious fanatics.* When a client says, "God sent me to you, and God will see to it that you make lots of money," exercise great caution.
10. *Clients who refuse to come into the office.* These people want free legal advice by telephone. They don't want to waste their time coming to your office because they don't intend to pay you.

### *About the Author:*

Jay Foonberg has successfully practiced business law, business litigation, estate and probate litigation, legal ethics and aviation law. He is the author of several books and articles, including the best-selling books *How to Start and Build a Law Practice* and *How to Get and Keep Good Clients*.

*This chapter is excerpted with permission from How To Get and Keep Good Clients and can be downloaded by chapter from [www.Foonberglaw.com](http://www.Foonberglaw.com).*

### *Every Gunslinger's Problem* continued from page 3

The street was so quiet that you could hear an ant belch. For a few moments, no one moved. Then the local people came alive.

"Bart wasn't nearly as fast as I thought. I think I could have beat him."

"Maybe we didn't need to hire anyone."

"Did you mean to miss his heart the first time, Tolman, or were you just careless? You didn't know Bart before this, did you? You've never been in his gang or anything, have you? You seemed to let up right when you had him on the ropes. Two shots! I never thought it would take *two* shots."

"You haven't spent our four dollars yet, have you? I think after you missed him with the first shot, we have a right to a refund..."

And as I bolted up in bed, it struck me that probably throughout history, people who fight for others have had the same problem. If you win, the client could've too, without you. If you lose, you don't deserve to be paid.

It makes me wonder. What kind of up-front money do you suppose Wyatt Earp asked for? No doubt he knew all too well that as a gunslinger, you just can't expect to get paid after the fight.

### *About the Author:*

Jeff Tolman has practiced in Poulsbo, WA, for the past 30 years, acting as the part-time municipal judge for the past 14. He is an AV rated lawyer who has served in the ABA House of Delegates and the State Bar Board of Governors. After three decades in the practice he is still a true believer.

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**Stage III.** Where do you begin to market? A successful law firm marketing program has both *internal* and *external* components. *Internal* marketing consists of maintaining your current client base by providing the best professional service possible and then cross-selling additional services to them. Your existing clients are your most lucrative (and cheapest) source of business development and can be excellent referral sources. All too often, existing clients are taken for granted and may even be ignored in an improper marketing effort. You should be continuously monitoring their satisfaction and suggested ways you can help them by providing additional services.



The *external* component is the group of activities you undertake to attract new clients. My experience is that most new “solid” clients come from the personal business relationships my firm builds, rather than ads it runs or the newsletters it sends out. That is why a good share of our marketing effort is dedicated to “personal marketing.” We hold “press the flesh” events with other professionals (carefully targeted groups of bankers, lawyers, brokers, commercial realtors, etc.) who can get to know and trust us and become excellent referral sources. We use networking opportunities, such as seminars and presentations, to reach new audiences of businesses and individuals, and we aggressively follow up with those who are interested in our services. And we stress community service. Even the entry-level professionals at our firm are encouraged to become involved in a community organization or board of their choice. We all win: the individual gets involved in a cause or organization they can personally support and learn from; the firm (through the employee) makes potentially valuable business

contacts, and we both give back to the community.

If your marketing plan has been well thought out and appropriately structured, marketing tools will be developed in a logical sequence. Firms that appear overly eager to develop brochures, start an advertising campaign, or conduct seminars may be covering up the anxiety associated with planning. This shotgun approach may have short-term payoffs but probably no long-term rewards. I advise you to have an action plan that

directly relates tools (such as holding a seminar) to objectives (creating “personal contract” opportunities).

Remember that marketing is an ongoing process, not a quick fix. Don't expect results overnight; you will need to allow time to evaluate them. Marketing has a synergy all its own; it is never static. The joys and the challenges mean revising plans and messages to respond to ever-changing market conditions and the needs of your clients. You must constantly evaluate your markets, looking at new services as courageously as Sony, Toyota, or GM. And you must establish systems to track the results of your efforts. Law firms which launch a marketing program with this approach should have a competitive edge.

*About the Author:*

Bruce F. Malott, CPA, CFP, has lectured around the country on law firm management, marketing and automation. He is managing principal of Meyners+Company, an Albuquerque-based certified public accounting and business consulting firm.

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*50 Ways to Get Referrals* continued from page 4

34. If looking for work with a large corporation, look for an acquaintance in the organization or find a mutual acquaintance of the decision maker in the corporation to introduce you.

**Practice Community Outreach**

- 35. Be visible at your bank and make your own deposits. Bankers have the opportunity to refer lots of cases.
- 36. Offer to teach at a vocational-technical paralegal program, law school, or community education program.
- 37. Contact the key people or organizations in your area who conduct seminars and offer to organize a seminar or speak on topics in your area of practice.
- 38. Get active in community organizations.
- 39. Network with other professionals.
- 40. Refer prospective clients to other professionals you deal with such as dentists, hairdressers, realtors, and accountants.
- 41. Accept all speaking engagements, if possible. Offer to speak to organizations other than bar groups, such as high school students, the elderly, and community groups.

**Practice Outreach to the Legal Community**

- 42. Keep in touch with lots of lawyers through lunches, bar meetings, and volunteer activities.
- 43. When attorneys give you referrals, keep them up-to-date on the progress of the case.
- 44. Volunteer with the court to act as a child advocate if you want cases involving children.

45. Organize a group of young attorneys to meet monthly and discuss cases and challenges in the practice of law. Volunteer to be a mentor.

**Turn Free Advice into Satisfied Clients**

- 46. Write articles for your local bar publication.
- 47. Publish a newsletter.
- 48. Offer to write a legal column for your weekly or neighborhood newspaper.
- 49. Remind the staff in your office that you would be happy to talk to their families and friends about their problems.
- 50. Send letters to clients or potential clients about recent developments in the law or to report on general topics such as upcoming tax deadlines, consumer rights, family law, tenant-landlord law, and collection procedures.

These are a few suggestions for general referrals. Building your client base takes time and effort. You may not see results for a while, but these methods do work.

*About the Author:*

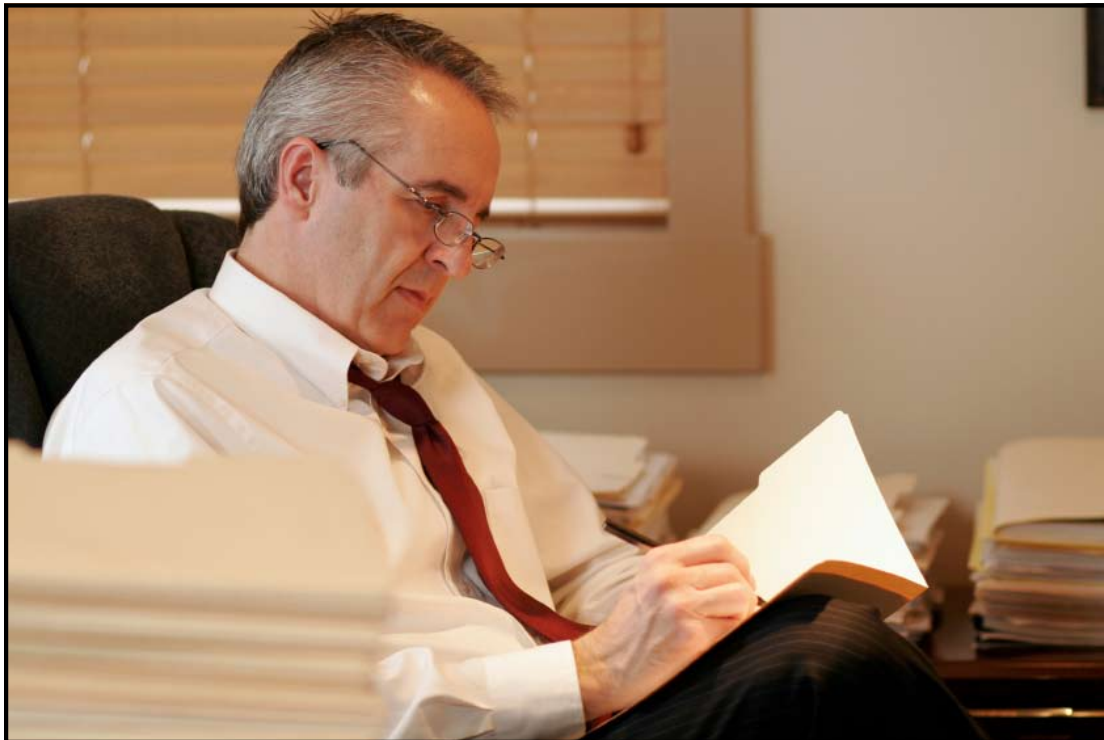
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# Avoiding Legal Malpractice Claims

## **Communicate! Communicate! Communicate!**

By Duke Nordlinger Stern, JD, PhD



cost inefficient. Ironically, in many instances these are the same attorneys who fail to properly document their files, probably for the same reason. Adequate file documentation is a cornerstone of the delivery of quality legal services. Deceptive engagement and closing letters to a client satisfy both the need for this aspect of file detail and effective communications. Usually such letters take no more time than the creation of file notes alone.

What happens during the relationship is usually as important as what occurs at the beginning and the end. To create a complete record of oral communications, lawyers should articulate all such events in clients' files. Such a procedure only satisfies one-half of the requirements, and

One requirement of successful client relations and effective malpractice prevention is continuous communications. At the inception of the attorney-client relationship, there should be an engagement letter which confirms the nature of the representation, what the attorney will and will not be doing, the fee arrangement and any other understandings about the undertaking. At the conclusion of the attorney-client relationship, there should be a closing letter which confirms the results of the representation, who will be responsible for any future activities, whether the lawyer will send reminders about deadlines, and when a subsequent review might be appropriate. Since during the course of the attorney-client relationship there can be numerous instances when advice and counsel are given, each of these should also be confirmed in writing.

Lawyers who ignore the need for engagement and closing letters seem to take such a course because of a preconception that such communications take too much time and would render the matter

a client might not accurately remember or understand what is said. Again since the writing of a letter and the making of articulate file notations take about the same amount of time, written confirmations to the client are the preferable procedure.

It has been suggested that all of these letters to clients could be interpreted as quite defensive. There is absolutely nothing wrong with practicing defensively when such an approach improves the attorney-client rapport, facilitates effective communications, reduces the risk of malpractice claims and does not increase the cost of a representation.

*About the Author:*

Duke Nordlinger Stern, J.D., Ph.D. served as risk manager to the State Bar in the areas of professional liability claims analysis, loss prevention and claims repair in 1992.

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